Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric *and* International Brotherhood of Electrical Workers, Local 11, AFL-CIO. Case 31-CA-9815

December 16, 1983

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On July 9, 1982, Administrative Law Judge Maurice M. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

The General Counsel has excepted to the Administrative Law Judge's failure to find that Respondent violated Section 8(a)(1) of the Act as alleged in the complaint by threatening an employee with discharge if he caused any trouble in the shop as a result of engaging in union activities. The record reveals, the Administrative Law Judge found, and we agree that Respondent knew prior to January 17, 1980, that its employees were engaging in union activities, and in particular knew that Bruce Richenthal had been involved in such activity.[3]

The record also shows that on payday, January 18, 1980, the day after Respondent had discharged Richenthal because of his union activities, Respondent's proprietor, Howard Feldman, gave employee Anthony Garcia his paycheck and requested that Garcia wait. Feldman then walked with Garcia to Respondent's parking lot and, according to Garcia's credited testimony, the following conversation ensued:

> Howard asked me if I had any complaints and I said, no, I hadn't. Then he came out and told me—I had not asked him any questions about Bruce Richenthal and he came out and told me that Bruce was fired because he was nosy and got into too much of Howard's business. I just listened to him and then he told me that—he said that Bruce had put things into my mind and that he had saw [sic] the two of us on occasion talking to the other employees and that he wanted it to stop and that he didn't want any trouble in the shop. At that point he asked me—he told me that if I thought I could do better, that I could go elsewhere. Then he said that I wasn't a shy person, that if I had anything to say, to come out and tell him. So at that point I told him that I was unhappy with my wages and he said that he has given me raises and then I pointed out that he said that if the company did well that I was going to do well too in perspective to my wages and what-not. At that point the conversation ended because

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

No exceptions were filed to the Administrative Law Judge's finding that Respondent unlawfully created the impression that its employees' union activities were under surveillance, in violation of Sec. 8(a)(1) of the Act.

The General Counsel filed exceptions to the Administrative Law Judge's finding in sec. III, C,1,b, of his Decision that the General Counsel's proof of mailing was insufficient to raise the presumption of due receipt. Because we adopt the Administrative Law Judge's finding that the presumption of due receipt had been overcome, we find it unnecessary to consider his alternate finding concerning the adequacy of the proof of mailing.

We consider to be premature the Administrative Law Judge's citation in the remedy section of his Decision of *Robert Haws Company*, 161 NLRB 299 (1966), for the proposition that the escrow period for any backpay due discriminatee Richenthal should be for 1 year rather than the normal 2-year period. Such a determination is more properly made in the compliance stage of these proceedings, when consideration can be given to all appropriate factors. Casehandling Manual (Part III), sec. 10584.2. See also *Seminole Asphalt Refining, Inc.*, 225 NLRB 1202, 1205 (1976).

Because the Administrative Law Judge plainly found Respondent's reasons for discharging Richenthal, Garcia, and Medina to be pretextual, Member Jenkins would not rely on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

[2] The Administrative Law Judge inadvertently failed to order Respondent to remove from its files any references to the discharges of Richenthal, Garcia, and Medina. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982). We will modify the recommended Order accordingly.

The Administrative Law Judge recommended that a broad cease-and-desist order issue because Respondent's course of conduct "goes to the heart of the Act." Inasmuch as this is an insufficient basis upon which to grant a broad cease-and-desist order, we have reexamined the case in light of *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). We find no evidence that Respondent has been shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. We will modify the recommended Order accordingly.

[3] Respondent's employee complement is small, consisting of six or seven journeyman electricians and two or three apprentices. The employees, including Richenthal, discussed the Union while at work in Respondent's physically circumscribed facility. Feldman, Respondent's proprietor, personally observed employee Garcia in conversation about the union meeting with another employee, in which two authorization cards were passed from one employee to the other. Within days of these occurrences, the first union protagonist, who had hosted the meeting in his home, was singled out for discharge.

> Mike [Brunell] had walked out of the shop and we stopped talking. Then he mentioned that he wanted me to be on time and there was going to be changes in the shop. That was it.

We agree with the General Counsel that Respondent violated Section 8(a)(1) of the Act by implicitly threatening Garcia with discharge in this conversation. Feldman's references to Richenthal are thinly veiled allusions to Richenthal's union activities. On the heels of this reference, Feldman stated that he "didn't want any trouble in the shop," and told Garcia that if he "thought [he] could do better, that [he] could go elsewhere." It is well settled that an invitation to quit such as this is coercive and threatening because it conveys to employees the clear message that support for the union and continued employment are not compatible. *Rolligon Corporation*, 254 NLRB 22 (1981); *Intertherm, Inc.*, 235 NLRB 693 (1978), enfd. in relevant part 596 F.2d 267 (8th Cir. 1979); *726 Seventeenth Inc., t/a San Souci Restaurant*, 235 NLRB 604 (1978); *Padre Dodge*, 205 NLRB 252 (1973). We will therefore modify the recommended Order accordingly.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric, Beverly Hills, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(c) and substitute the following as paragraphs 1(c) and (d):

"(c) Threatening employees because of their union activity by telling them that support for a union and continued employment are not compatible.

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from its files any reference to the discharges of Bruce Richenthal on January 17, 1980, and Anthony Garcia and Jose Medina on February 8, 1980, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel action against them."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act, as amended, gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT discharge or lay off workmen, or discriminate in any manner with regard to their hire or tenure of employment, because they may have designated International Brotherhood of Electrical Workers, Local 11, AFL-CIO, or any other labor organization, as their representative for collective-bargaining purposes, or because of their participation in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

WE WILL NOT maintain surveillance, or make statements or participate in conduct calculated to create an impression that surveillance has been maintained, with respect to union activities by our employees, or their participation in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT threaten our employees by indicating to them that union support and continued unemployment are incompatible.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Bruce Richenthal, Anthony Garcia, and Jose Medina immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

[4] Member Hunter would delete from the cease-and-desist portion of the Administrative Law Judge's recommended Order the reference to Respondent's "maintaining surveillance."

WE WILL make Bruce Richenthal, Anthony Garcia, and Jose Medina whole for any pay losses which they may have suffered, or may suffer, because of the discrimination practiced against them, plus interest.

WE WILL expunge from our files any references to the discharges of Bruce Richenthal, Anthony Garcia, and Jose Medina, and WE WILL notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

HOWARD AND ROBERTA FELDMAN CORPORATION D/B/A L. A. BAKER ELECTRIC

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge: Upon a charge filed on February 25, 1980, by International Brotherhood of Eletrical Workers, Local 11, AFL-CIO (Complainant Union), and duly served, the General Counsel of the National Labor Relations Board caused a complaint and notice of hearing, dated March 20, 1981, to be issued and served on Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric, designated as Respondent within this decision. Therein, Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended. (61 Stat. 136, 73 Stat. 519, 88 Stat. 395.) Respondent's answer, duly filed, conceded certain factual allegations with the General Counsel's complaint, but denied the commission of unfair labor practices.

Pursuant to notice, a hearing with respect to this matter was conducted on December 8, 1981, in Los Angeles, California, before me. The General Counsel, Complainant Union, and Respondent were represented by counsel; Complainant Union's counsel, however, did not remain for the full hearing. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence with respect to pertinent matters. When their respective testimonial presentations were concluded, the General Counsel's representative and Respondent's counsel presented oral argument; briefs were waived.

FINDINGS OF FACT

Upon the entire testimonial record, documentary evidence received, and my observation of the witnesses, I make the following:

I. JURISDICTION

Respondent raises no question herein with respect to the General Counsel's jurisdictional claims. Upon relevant factual allegations—specifically, those set forth in detail with the second and third paragraphs in the General Counsel's complaint—which are conceded to be correct, and on which I rely, I find that Respondent was, throughout the period with which this case is concerned, and remains, an employer, within the meaning of Section 2(2) of the Act, engaged in commerce and business operations which affect commerce within the meaning of Section 2(6) and (7) of the statute. Further, with due regard for presently applicable jurisdictional standards, I find assertion of the Board's jurisdiction in this case warranted and necessary to effectuate statutory objectives.

II. THE LABOR ORGANIZATIN CONCERNED

Complainant Union, International Brotherhood of Electrical Workers, Local 11, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits certain employees of Respondent to membership.

III. UNFAIR LABOR PRACTICES

A. *Issues*

The General Counsel contends herein that Respondent discharged three designated employees, discriminatorily, because they had joined or assisted Complainant Union, or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection. Further, the General Counsel contends that Respondent's proprietor—through certain statements—unlawfully interfered with, restrained, and coerced employees, with respect to their exercise of statutorily guaranteed rights. Respondent seeks a determination, however, that its conceded proprietor's course of conduct derived from substantial economic considerations, reflected no animus directed toward Complainant Union, and should not be considered interference, restraint, or coercion statutorily proscribed.

B. *Facts*

1. Background

a. *Respondent's business described*

Respondent, functioning as a California corporation, with its single place of business located in Beverly Hills, California, sells and service electrical equipment. The firm maintains a small retail store, where it sells small electrical appliances. Within a slightly smaller "shop" facility, located in the store's rear, appliance repair services are provided. (Respondent's owner, Howard Feldman, keeps a desk, from which he conducts business, within his firm's retail store. Likewise, he maintains some office space within a small loft, located above Respondent's shop.) Within a so-called parking lot area, located behind the premises described, Respondent customarily parks several motor vans, whenever they are not being used.

Considered in totality, the present record, further, warrants a determination—which I make—that Respondent likewise provides electrical contracting services, with a fluctuating crew complement which, throughout the period with which this case is concerned, compassed some six or seven journeymen electricians, plus two or three apprentices. Respondent provides maintenance and

repair services, presumably, for both residential and commercial customers.

Sometime during November 1978, Respondent's present proprietor, Howard Feldman, purchased the business. Within the 4- or 5-month period which followed, Respondent's gross revenues—presumably derived from retail sales, small appliance repair services, and residential or commercial service calls, plus related work—fluctuated between $20,000 and $30,000 monthly. During March 1979, however, Respondent commenced work, pursuant to contract, in connection with a major Fox Wilshire Theater remodeling and renovation project. The firm's services, thereon, were required for some 8 or 9 months; sometime in November 1979 the project was completed. While it was in progess, Respondent's gross revenues—presumably from all sources—fluctuated between $80,000 and $100,000 monthly. (The record warrants a determination, which I make, that—while providing electrical contracting services for this theater renovation job—the firm maintained a more-or-less stable project crew there which, at one time or another, compassed some 10 or 12 named workmen, plus several "other guys" who provided transient services. Respondent's further commerical and residential service jobs, however, were still being handled.) During January 1980, following the Fox Wilshire Theater project's completion, Respondent's gross monthly revenues—so Feldman's credible, uncontradicted testimony shows—declined significantly; they fell from $88,000 in December 1979 to $21,000 for the following month.

b. *Respondent's employees consider unionization*

Commencing in November 1979, several of Respondent's employees, while working on the firm's Fox Wilshire Theater project, began to discuss their desire for better wages and fringe benefits. These discussions—which, I find, merely reflected their generalized concern—frequently took place on Respondent's Fox Wilshire jobsite. Some, however, took place—likewise—while the workers concerned were gathered on Respondent's Beverly Hills premises. Normally, such discussions would take place during morning hours, before the workers concerned received their day's job assignments from Respondent's proprietor. (The record warrants a determination, which I make, that employees Richenthal, Garcia, and Medina were particularly active participants during these conversations.) At some point, finally, the possible benefits which unionization might produce were discussed and considered. On Friday, January 11, 1980, these discussions produced a consensus, I find, that Complainant Union should be contacted.

On Monday, January 14, employee Richenthal notified several of his fellow workers—Garcia, Medina, Ramon Morris, and Brad Stevens—that a union organizational meeting would be held on Tuesday, January 15, at his home.

During that meeting, which Complainant Union's business representative attended, the four employees present—Garcia, Medina, Richenthal, and Morris—signed union designation cards.

On Wednesday, January 16, while Employees Garcia and Stevens were conversing "after work time" within the parking lot area located behind Respondent's Beverly Hills' premises, Garcia handed his fellow worker two blank union designation cards. When queried, with regard to their conversation and subsequent developments, Garcia testified that, while he was giving Stevens the cards in question, Respondent's proprietor, Howard Feldman, and electrician Mike Burnell, whom Garcia considered a supervisor, appeared; that Garcia saw them coming from behind a parked van; that they were, then, walking north, across the parking lot, to a nearby building's rear area where Feldman's personal motor car was normally parked; that, while they were passing by, some 15 feet distant, both Brunell and Respondent's proprietor "kind of slowed up a little bit" while looking toward Garcia and Stevens; and that, while this was taking place, Garcia was telling his fellow worker:

> . . . about the meeting that we had had and telling him about the authorization cards that we had signed and asked him if he was going to join with us; as I was telling him that, here is a couple of cards that you [and] Jordan could sign and we will turn them in to the union.

According to Garcia, Respondent's proprietor and Brunell continued walking, generally in a northerly direction, until they reached Feldman's vehicle. Nothing was said.

When questioned by Respondent's counsel, Feldman could not recall the specific late afternoon "incident" which Garcia had testimonially described. He reported, generally, that there were "many" occasions *during working hours* when he would walk through Respondent's parking lot, while "telling" people where to go, or while "showing" them something. Respondent's proprietor testified, further, that it would not have been considered "unusual" for Respondent's workmen to participate in "*morning*" conversations, after they had received their day's service assignments. Respondent's proprietor conceded that "conceivably" he, together with Brunell, had indeed walked past Garcia and Stevens, while they were conversing.

With matters in this posture, Garcia's straightforward, unequivocal testimony regarding the particular "incident" described, which he specifically recalled as having taken place "after working hours," merits credence, within my view.

Further, Garcia's proffered recollections—which I credit in this connection—warrant a determination that Richenthal had, likewise, spoken with several fellow workers, while on Respondent's premises, regarding the previous night's union organizational meeting, which had taken place at his home.

2. Challenged discharges

a. *The General Counsel's presentation*

(1) Bruce Richenthal

Thursday, January 17, was Garcia's birthday; pursuant to prearrangement, he did not report for work. That evening, however, Richenthal telephoned him; Garcia's fellow worker reported that he had been discharged.

Though Garcia's testimony, with particular reference to Richenthal's reported termination, constitutes hearsay, the record—considered in totality—will clearly warrant a determination that the worker designated was dismissed. When this case was heard, the General Counsel's representative declared that, some time following his cessation of work, Richenthal had left Los Angeles; that he had reportedly moved to Oregon without leaving a forwarding address; and that he could not be located. The present record, therefore, contains no direct testimony—proffered in the discharge's behalf—regarding the circumstances surrounding his termination. Respondent's proprietor, however, has presented no testimonial or documentary challenge with regard to the General Counsel's contention that Richenthal was discharged on January 17; the record reflects his claims, merely, that Richenthal was—rather—terminated for cause. That contention will be considered hereinafter.

The following day, Friday, January 18, was Respondent's regular payday. Garcia reported for work. When Respondent's proprietor gave him his paycheck—so the electrician recalled—he was requested to wait. Feldman then walked with him to Respondent's parking lot. With respect to their conversation which followed, Garcia testified that:

> Howard asked me if I had any complaints and I said, no I hadn't. Then he came out and told me—I had not asked him any questions about Bruce Richenthal and he came out and told me that Bruce was fired because he was nosy and got into too much of Howard's business. I just listened to him and then he told me that—he said that Bruce had put things into my mind and that he had saw the two of us on occasion talking to the other employees and that he wanted it to stop and that he didn't want any trouble in the shop. At that point he asked me—he told me that if I thought I could do better, that I could go elsewhere. Then he said that I wasn't a shy person, that if I had anything to say, to come out and tell him. So at that point I told him that I was unhappy with my wages and he said that he has given me raises and then I pointed out a conversation we had when he first purchased the company and that he had said that if the company did well that I was going to do well too in perspective to my wages and what-not. At that point the conversation ended because Mike [Brunell] had walked out of the shop and we stopped talking. Then he mentioned that he wanted me to be on time and there was going to be changes in the shop. That is it.

When questioned by Respondent's counsel, Garcia reiterated his conceded recollection that Feldman had, *inter alia*, requested him to report for work "on time" thereafter. Feldman's comment had, concededly, been bottomed on Garcia's prior tardiness record; that record will be considered, further, hereinafter.

Respondent's proprietor, when subsequently queied by his counsel, herein, with regard to *any conversation* during which he had described Richenthal as nosy, could not recall any "specific conversation" during which Respondent's January 17 discharge had been thus characterized. He proffered no denials, however, with respect to Garcia's testimony, recapitulated herein. Within my view, that testimony merits credence.

(2) Anthony Garcia and Jose Medina

Directly following Richenthal's termination, employee Garcia and Ramon Morris worked as partners, for some period never specified within the present record. At some time within their January 21-25 workweek, Roberta Feldman, Howard Feldman's wife—who then worked in Respondent's store—spoke to Morris, while Garcia was present, regarding their working relationship. According to Garcia, whose testimony with respect thereto stands—herein—without challenge or contradiction, Mrs. Feldman told Morris that he had "better watch out that he doesn't get into any trouble" now that he and Garcia were working together.

During the 3-week period which followed Richenthal's termination, so Garcia testified, he, Medina, and Morris continued to discuss possible unionization with their fellow workers. Such discussions were—so far as the record shows—conducted openly, within Respondent's shop, within the confines of the firm's rear parking lot, and likewise at various "points" never specific, located "away" from Respondent's premises.

On Friday, February 8, when Garcia reported "after work, at the end of the day" to receive his paycheck, Respondent's proprietor requested that he wait. When pursuant to Feldman's request, they had—then—moved to Respondent's shop loft office, Garcia was handed an envelope. His testimony, regarding the conversation which followed, reads as follows:

> . . . He [Feldman] was handing me an envelope saying that he was sorry but he had to let me go. I said, what do you mean, you have to let me go. He said, yes, because it would benefit the company and it would also benefit myself. . . . and I told him that I didn't think it was right, him letting me go like that without giving me a fair chance or a warning of some sort. He said that he thought that my attitude had changed toward the company and I told him, yes, I agreed with [him], because I didn't think I was being treated fair and that as soon as the other guys found out how he really actually was and how he operated, that they weren't going to stay around with him either, and that I had been with him such a long time that he knew that he could depend on me; I was always there. Then I asked him about vacation pay that I felt was due me and at that point I think the conversation ended and I took off . . . .

When queried further, Garcia recalled that Feldman had, during their conversation, mentioned a customer's purported complaint that he, while working with employee Morris, possibly during November 1979, had taken "too much time" to complete a particular job. Respondent's proprietor, so Garcia testified, had, however, disclaimed any criticism regarding the quality of his work. While a

witness, Garcia could not recall the purportedly dissatisfied customer's name; he testified, however, that the particular residential job which Feldman mentioned had been completed, for a woman client, within 1 or 1-1/2 days, some 3 months previously.

When Garcia left Feldman's presence, following his notice of termination, he encountered Medina at Respondent's shop door. He reported that he had been laid off. Medina then proceeded to Respondent's loft office. There, Respondent's president notified him—likewise—that he was being terminated. Medina's testimony, with regard to their conversation, reads as follows:

> He told me that he had to let me go because he had some complaints from customers and he wanted to make some changes . . . . He told me that I was being late several times . . . . I asked him about the complaints and he didn't get into any details of who did complain . . . . Yes, I asked him about being late. I told him that it wasn't that great a thing for me to be laid off.

Within its record context, Medina's final testimonial comment—though poorly phrased—was, within my view, clearly calculated to convey his proffered recollection that Feldman's prior reference to his supposed "late reporting" record had been protested. Essentially, Medina was claiming, while a witness, that Feldman had been told he [Medina] did not consider his supposed "tardiness" record something sufficiently serious to warrant termination; I find his testimonial statement—properly construed—legitimately susceptible of that interpretation. So far as Medina's testimony shows, his protest, noted, capped, and concluded his February 8 conversation with Respondent's proprietor.

Subsequently, both Garcia and Medina filed State unemployment insurance claims; Respondent filed no protests, however, with respect thereto. California's Employment Development Department was never notified—so I find—that Garcia or Medina had been discharged for cause.

b. *Respondent's defenses*

(1) Bruce Richenthal

While a witness, Respondent's proprietor was questioned with respect to whether he had acquired any knowledge, prior to Richenthal's January 17 termination, that his employees were meeting, or that they were considering unionization. He replied, merely, with a simple, monosyllabic negative.

When queried, then, regarding the circumstances, purportedly nondiscriminatory, which—so Respondent contends—had precipitated Richenthal's discharge, Feldman testified: *First*, that a wealthy lady customer had lodged a complaint with respect to Richenthal's on-the-job behavior, sometime previously. (The customer had, so Feldman recalled, notified his retail store salesman and general factotum, David Friedman, that Richenthal, while working at her home, had been trying to ingratiate himself, and thereby get things from her. Summoned as Respondent's witness, Friedman reported the customer's complaint, merely, that Richenthal had "begged" her household servants to provide his lunch.) *Second*, that, 2 days before Richenthal's discharge, Respondent's proprietor had discovered the journeyman electrician going through his (Feldman's) personal papers, while they were on his desk, within Respondent's store premises. (The record warrants a determination, which I make, that Respondent's workmen, normally, gather at Feldman's store desk when they report for work, and that they receive their daily service call assignments, from Respondent's proprietor, there.); *Third*, that, sometime between 6 and 10 days previously, Respondent's salesman, David Friedman, had reported a presumptively improper, possibly criminal, request which Richenthal had, theretofore, purportedly proffered. (While a witness, Respondent's proprietor claimed—with Friedman's corroboration—that Richenthal had requested the salesman to provide him with an opportunity to visit Respondent's store surreptitiously, and to remove some merchandise, which he needed for a "side" job, without notice or prior permission.) *Fourth*, that Richenthal, when confronted with a prior January 16 request that he sign a new IRS W-4 form, which Respondent's accountant wanted signed, had, for reasons never specified, refused.

Richenthal was terminated, so Feldman has testimonially conceded, when he reported for work on January 17. When queried with regard to their conversation, at that time, Respondent's proprietor testified, summarily, that:

> I told him that I was terminating him because of his attitude, complaints from customers, going through my personal papers, generally speaking those were the reasons.

While a witness herein, Respondent's proprietor conceded that he had not mentioned Friedman's prior report, regarding Richenthal's purported request that he be permitted to take certain merchandise from Respondent's store.

(2) Anthony Garcia and Jose Medina

(a) *Respondent's claimed lack of knowledge regarding union activity*

Respondent concedes, for the record, that Garcia and Medina were terminated on Friday, February 8, 1980, the firm's regular payday. Herein, however, Feldman contends that both men were terminated primarily because Respondent's monthly gross revenue had declined. According to Respondent's proprietor, Garcia and Medina were particularly selected for discharge pursuant to established company policies, and for business-related reasons.

In this connection, Respondent proffers a threshold contention that Garcia's and Medina's concurrent terminations should not reasonably be considered prompted by statutorily proscribed considerations, since the firm's proprietor had acquired no knowledge, when they were terminated, regarding their desire for union representation, or their participatory role as union protagonists.

The record, herein, reflects the General Counsel's primary reliance on several developments, subsequent to Richenthal's termination, which—within the General Counsel's vouch—should dictate a determination that Respondent's proprietor had been vochsafed notice, particularly with regard to Complainant Union's representational interest, prior to Garcia's and Medina's challenged discharges. With respect thereto, Respondent contends—contrariwise—that the General Counsel's presentation, with reference to these purported developments, provides no sufficient warrant for determinations that Feldman's definitive "knowledge" relative to Complainant Union's representational interest within Respondent's work force predated Garcia's and Medina's February 8 terminations, or that their discharges had been precipitated thereby. Respondent's contentions, so far as they related to particular facets of the General Counsel's case, may be summarized as follows:

First, the General Counsel's representative had, herein, proffered documentary "evidence" plus purportedly supportive testimony, sufficient to warrant determinations—within his view—that Respondent's proprietor had been formally notified, within a letter dated February 1, 1980, and presumably dispatched on the date specified, that a majority of the firm's journeymen and apprentice electricians had designated Complainant Union as their exclusive bargaining representative. Further, Respondent had been, purportedly, requested—therein—to designate a duly authorized spokesman, for the purpose of negotiating a collective-bargaining contract covering wages, hours, and further employment terms and conditions, for Respondent's workmen within the bargaining unit designated.

A photocopy, purportedly duplicative of the document in question, proffered for the present record, reveals a predrafted "form" message, typed on the letterhead stationery of Brundage, Davis, Frommer & Jesinger, Complainant Union's law firm, bearing the stamped signature of Richard J. Davis, Jr., a firm member. The letter, directed to Respondents purportedly on Complainant Union's behalf, specified the job classifications compassed within the bargaining unit with respect to which Complainant Union claimed representative status, while concurrently listing various excluded job categories. With respect thereto, Legal Secretary Sharon Monoson testified that, when the law firm which employs her—designated as Davis, Frommer & Jesinger currently—files a representation petition for some labor union which it represents, she regularly prepares the petition form, which—together with relevant authorization cards—she mails to a proper Board Regional Office accompanied by a "cover" letter; that, concurrently, she prepares and dispatches a form letter, directed to the concerned employer, notifying him with regard to the petitioning labor organization's majority representation claim; that, consistently with her regular practice, she had—in this instance—prepared a petition for Complainant Union's certification as the representative of Respondent's journeymen and apprentice electricians, which she had mailed, together with a prepared "cover" letter bearing a February 1, 1980, date, directly to this Board's Region 31; that she had, concurrently, prepared and dispatched a form notification letter—described previously herein—directly to Respondent, bearing the same preparation date; that, in the normal course of business, both letters would have been mailed on their designated February 1 preparation dates; and that her prepared letter, directed to Respondent herein, has never been returned undelivered. When queried by Respondent's counsel, Monoson conceded, however, that she had no specific recollection regarding the particular letter directed to Respondent; she could not recall that a letter, duplicative of the file copy which she had produced pursuant to the General Counsel's request, had been folded, placed in an envelope, stamped, and committed to the mails. The legal secretary claimed, merely, that she "always" follows the same procedure, with respect to such correspondence.

Confronted with this testimony, Resopndent's proprietor claimed, while a witness, that no letter, prepared on Brundage, Davis, Frommer & Jesinger letterhead stationery, and directed to his firm, had *ever* been received.

Summoned as the General Counsel's witnesses, employees Garcia and Medina both testified—*while responding to leading questions from the General Counsel's representative*—that, within the 7-day period which preceded their February 8 terminations, Respondent's store salesman, David Friedman, had, during separate conversations with them, reported Respondent's receipt of some letter from *Complainant Union* herein, on Saturday, February 2, specifically. Nothing within the present record, however, would warrant a determination that *Complainant Union's* representatives had, theretofore, attempted to communicate with Respondent directly.

When queried further, with respect to whether Respondent had ever, alternatively, received some "letter from a union" Feldman proffered a comparably categorical denial. Respondent's retail store salesman, who customarily handled the firm's delivered mail, likewise testified—consistently with his superior's witness chair declaration—that, for reasons which he detailed, his opportunities to determine who had sent Respondent letters were quite limited; that he had never seen a letter with a return address which indicated that it had been sent by any labor organization; that Respondent did, frequently, receive mail from attorneys, but that he could recall no letter from Complainant Union's legal counselors; and that he had never reported such a letter's receipt.

Second: The General Counsel's representative further proffered a copy of the representation petition, dispatched to the Board's 31 Regional Office for Region 31 in Complainant Union's behalf, together with five signed authorization cards, plus a February 1, 1980, cover letter. The record—with respect to which Respondent proffers no challenge—reflects the Regional Office's receipt of Complainant Union's petition on Monday, February 4; the petition was docketed, promptly, on that date, with a Case 31-RC-4699 docket designation. In this connection, further, the General Counsel's representative declared—without challenge or contradiction—that a Regional Office letter, drafted to notify Respondent with regard to Complainant Union's representation petition, had been dispatched on Wednesday, February 6; this letter, con-

sistently with routine Regional Office practice, had been dispatched via so-called ordinary mail.

When queried with respect to this purported Board communication, Respondent's proprietor, again, professed no recollection, whatsoever, concerning its receipt. He testified, merely, that "maybe ten days to two weeks later" he had received a Regional Office communication, sent by certified mail; with respect to that communication's specific content, however, Feldman's testimony provides no clue.

Third, when questioned by the General Counsel's representative, pursuant to Rule 611(c) of the Federal Rules of Evidence, Respondent's proprietor recalled a February 1980 telephone conversation with Board agent Norman McCracken; having been shown McCracken's notes with respect thereto, Feldman could not recall the precise date when the Board agent called, but conceded he had "no reason to doubt" the February 7 date shown. Feldman claimed he had received no notice whatsoever—prior to McCraken's call—with regard to Complainant Union's representation petition, previously filed. With respect to their telephone conversation, Respondent's proprietor testified that:

> He called me and I told him—at first I really didn't understand what he was talking about. I thought he was talking about unemployment . . . [He] called me and started to discuss something about like a hearing. I really didn't know what he was talking about and it sounded like a legal matter to me and I told him, I said, I don't understand what you are discussing but let me give you the name of my attorney and if you would contact him maybe we could straighten it out. I gave him the name of my attorney and the phone number and I think he contacted my attorney after that.

When queried, specifically, with respect to whether McCraken had told him that Complainant Union had filed a representation petition, Feldman recalled, merely, that McCraken had said "something" regarding a hearing wherein "they [no antecedent specified] wanted to establish something" which he thought concerned people filing for unemployment compensation. Respondent's proprietor recalled no reference to a petition; similarly, he recalled no query with respect to whether he would "agree" regarding a representation election. When shown McCraken's notes, presumably with regard to their conversation's substance, Feldman claimed no recollection that Board procedures had been explained, or that McCracken had questioned him with regard to consent election possibilities. Likewise, Feldman professed no recollection with respect to whether Complianant Union's name had been mentioned.

Considered in totality, Feldman's testimony—taken at face value—would reflect a contention that, prior to Garcia's and Medina's February 8 terminations, Respondent had received no written communications, either from Complainant Union directly, from Complainant Union's counsel, or from Regional Office personnel, with regard to Complainant Union's representational interest claims. His proffered recollection, further, suggest a contention that Board Agent McCraken's comments, during their presumptive February 7 telephone conversation, had—because of their presumably cryptic character and limited scope—given him no reason, then, to believe that Respondent's craft employees desired union representation.

(b) *Respondent's Rationale for Challenged Discharges*

Respondent's proprietor testified, herein, that his firm's declining sales revenue "greatly" influenced his February 7 decision regarding Garcia's and Medina's February 8 terminations. In this connection he declared that:

> I had to make a decision to let some people go based on the fact that I had little or [no] work at that time and I had to choose people—prior to that I was very happy to have people working for me. When my sales were up and I needed people I kept people whether they were really as good as they should have been or not, all right, because I was desperate for people. When this started to taper off, obviously, after December I had to make a decision to let some people go.

Garcia and Medina were chosen for termination—so Respondent's proprietor testified—because complaints had been received with regard to their work, and because both men had, theretofore, been chronically late reporting for work; further, Feldman noted—with respect to Garcia particularly—that Respondent's electrician had—without soliciting or receiving prior authorization or permission—purchased some personal tools from a company supplier, for which that supplier had billed his firm.

When queried specifically regarding the circumstances of Garcia's February 8 discharge, Respondent's proprietor recalled that "at the end of the day" the electrician had been summoned to his shop loft office. He testified:

> I told him I was terminaing him because obviously business was slow and his lateness—he was warned constantly about being late, which his timecards indicated. His attitude toward his work was extremely poor. Some of the work he had done we had gotten [call-backs] on. There was the incident with the tools.

According to Feldman, Garcia had not denied his tardiness record; further, he had not responded, when taxed with his purchase of tools, charged to their firm, without permission. Following Garcia's termination, Medina had likewise been notified regarding his discharge. With respect to their conversation, Respondent's proprietor recalled that:

> I told Jose that the reason I was terminating him again was that he was slow and the fact he was consistently late and I gave him many opportunities and he couldn't correct it and we were losing too many customers because of the callbacks on his work. The quality of his work wasn't what it should have been and I had to make decisions as to who to keep and who to let go.

In connection with Respondent's proffered defense—that Garcia and Medina were selected for termination when the firm was confronted with a substantial business decline—Respondent's counsel handed the General Counsel's representative a document, for perusal, which, so he represented, reported the firm's sales figures, listed "by job" and "by month" specifically. Respondent's supposed sales revenue summary, however, was never proffered for the record.

In conclusion, Respondent's proprietor testified, without challenge or contradiction, that Garcia and Medina were not immediately replaced; he claimed that Respondent's business had remained "down" for some 6 months; and, indeed, that no electrician had been hired within the period noted. When cross-examined by the General Counsel's representative, however, Feldman conceded that—from a February 1980 low of $16,800, Respondent's sales revenues had rebounded to $37,181 for March 1980, and $28,239 for the following month.

Further, Respondent's proprietor testified, likewise without challenge or contradiction, that—between the date on which he purchased Respondent and the date when Garcia and Medina were terminated—he had terminated some 10 or 12 workmen for various, never stated, causes; and that, within the same period, some "five or eight" workers had been laid off. None of the workers laid off, or terminated for cause, have "ever" been rehired; while a witness, Feldman reported that his "policy" precluded their recall.

C. *Discussion and Conclusions*

1. Respondent's knowledge regarding union activity

a. *Before Richenthal's discharge*

Upon this record, Respondent's threshold contention that, prior to Richenthal's termination, Feldman lacked knowledge regarding his crew's demonstrated "interest" concerning union representation, and that he lacked knowledge regarding the identity of Complainant Union's principal protagonists within the group carries no persuasion, within my view. I note:

First, that, consistently with well-settled decisional doctrine, the small size of Respondent's Beverly Hills physical facility, coupled with the small size of the firm's crew complement, should warrant a factual conclusion with regard to Respondent's presumptive "knowledge" that various crewmembers had mounted a compaign for union representation. Under the Board's so-called small plant doctrine, the smallness of a concerned employer's facility provides a predicate for a cognizable inference, regarding such an employer's knowledge of his employee's decision to promote their firm's unionization, particularly when those employees have openly participated in discussions relative to unionization, and designation card distribution. Where, as here, Respondent conducts business with no more than six or seven journeymen electricians, and possibly three apprentices, working out of the firm's physically circumscribed facility, and many of their discussions took place there, the suggested "inference" with regard to Respondent's knowledge regarding their conducts may—clearly—be considered reasonable. See *Wiese Plow Welding Co., Inc.*, 123 NLRB 616, 618 (1959). Compare *Alumbaugh Coal Corporation* v. *N.L.R.B.*, 635 F.2d 1380, 1384 (8th Cir. 1980), enfg. in relevant part 247 NLRB 895, 900; *Chauffeurs, Teamsters & Helpers, Local 633, N. H.* v. *N.L.R.B.*, 509 F.2d 490, 497–498 (D.C. Cir. 1981), reversing and remanding *Bulk Haulers, Inc.*, 200 NLRB 389, 393 (1972); *A. J. Krajewski Manufacturing Co., Inc.* v. *N.L.R.B.*, 413 F.2d 673, 676 (1st Cir. 1976), enfg. 172 NLRB 2160 (1968); *N.L.R.B.* v. *Minotte Manufacturing Corporation*, 299 F.2d 690, 691 (3d Cir. 1952). See, likewise, *Firmat Manufacturing Corp.*, 255 NLRB 1213, 1221 (1981); *Five Star Air Freight Corporation*, 255 NLRB 275, 278 (1981); compare *W. W. Grainger, Inc.*, 255 NLRB 1106, fn. 4 (1981), in this connection.

Second, that, apart from this Board's well-settled small plant doctine, the record herein—considered in totality—warrants a determination, within my view, that Respondent's proprietor really "knew" his firm's craftsmen were considering unionization, prior to electrician Richenthal's January 17 termination. Such knowledge—so numerous Board decisions hold—may be proven through circumstantial evidence, considered sufficient to warrant reasonable inferences. Herein, Feldman's knowledge regarding the existence of prounion sentiment within Respondent's crew—and, more particularly, Richenthal's role in connection with its propagation—may, legitimately, be deduced. On Monday, January 14, Richenthal had notified four fellow workers that a union organizational meeting, at his home, would be convened the following night; during that meeting, four union designation cards had been signed. The following day, while on Respondent's premises, Richenthal had, so Garcia's credible testimony shows, spoken to several fellow workers regarding the meeting noted. Likewise, Garcia's late afternoon January 16 conversation with Employee Stevens, during which the latter had been handed two Union designation cards, had been—so the record shows—seen, and presumably noted, by Respondent's proprietor. Thereafter, on January 17, which was not Respondent's regular payday, Complainant Union's principal protagonist—Richenthal—was singled out for discharge. And, subsequently, when Garcia received his regular Friday, January 18, paycheck, Feldman solicited his presence for a private conversation. During their talk, Respondent's proprietor—without voicing a purported preamble, so far as the record shows—queried Garcia with respect to whatever "complaints" he might have. Feldman then *volunteered* information that Richenthal had been fired because he had been "nosy" and because he had gotten into "too much" of Respondent's business. Further, Respondent's proprietor declared his belief that Richenthal had "put things" into Garcia's mind; reported that he had seen Richenthal and Garcia talking with their fellow workers; declared that he wanted "it" stopped; and stated that he wanted no "trouble" within Respondent's shop. Feldman then told Garcia that, if he thought he could do better, he could go elsewhere. With matters in this posture. Respondent's proprietor solicited his subordinate's responsive comments. Garcia's detailed testimonial recapitulation—with regard to their conversation—

clearly reveals, I find, that Feldman considered his listener a disaffected workman; that he considered Richenthal responsible for Garcia's disaffection; that, since he, [Feldman], had seen both men "talking" with other employees, he wanted such conversations, regardless of their subject matter, stopped; and that he wanted no "trouble" within Respondent's shop. Such comments, within my view, clearly warrant inferences—which I draw—that Feldman had, somehow, become cognizant regarding the prounion ferment within Respondent's crew complement; that he considered Garcia's conversations with fellow workers reflective of their "concerted" concern regarding unionization; that he "knew" those conversations were concerned with Respondent's business; and, finally, that he considered them calculated to generate "trouble" which he wished to forestall. Upon this record, Feldman's knowledge that Respondent's employees were really discussing his firm's possible unionization cannot be gainsaid.

Third, that Garcia's further testimony, with regard to Mrs. Feldman's subsequently volunteered comment, herein noted, provides further support for a determination regarding Respondent's knowledge in this connection. Within the calendar week following Richenthal's termination, so Garcia's credible, undenied testimony shows, Mrs. Feldman warned Ramon Morris, Garcia's working partner, that he should "watch out" personally, to forestall possible "trouble" while he and Garcia were working together. That comment, within its situational context, clearly manifested Respondent's belief that Garcia might prove to be a troublemaker. Since Respondent's defensive proffers herein compass no purported, *business-related*, justification—whatsoever—for such a belief, Mrs. Feldman's admonition, reasonably construed, necessarily implied, I find, that Respondent considered Garcia's presumptive union sympathies potentionally troublesome.

b. *Before Respondent's February 8 discharges*

In support of the General Counsel's complaint allegations, with particular reference to Respondent's seemingly coordinated February 8 discharges, the General Counsel's representative sought to establish Feldman's receipt of notice, *shortly prior thereto*, specifically with respect to Complainant Union's representation petition. His testimonial and documentary proffers, calculated to demonstrate Respondent proprietor's knowledge with respect thereto, reflect his reliance upon two distinguishable theories.

First, the General Counsel's representative, as previously noted, sought to prove Respondent's timely receipt of Brundage, Davis, Frommer & Jesigner's February 1 letter, with respect to Complainant Union's claim to represent a majority of Respondent's craft workers. In this connection he relied, presumably, upon the principle that *proof of mailing*, proffered with respect to a properly addressed letter, creates a strong but rebuttable presumption regarding its subsequent *delivery and receipt* in due course. Whether the General Counsel's proof that Brundage, David, Frommer & Jesinger's purported February 1 letter was mailed suffices to raise a presumption regarding its receipt may, however, be doubtful.

Legal Secretary Monoson, working for the designated law firm, testified, merely, that, during the normal course of her work, she *routinely* prepares form letters, calculated to notify concerned employers with regard to union representational claims, whenever she dispatches representation petitions, and relevant signed designation cards, with formal "cover" letters, directed to Board Regional Offices; that she *routinely* places these documents "in the mail" herself; that "everthing goes out" concurrently; that the same procedure "when [she follows] it" always takes place; and that, to the best of her knowledge, the notification letter directed to Respondent, which she prepared, has never been returned undelivered. When litigants (herein, the General Counsel) seek to raise a presumption with regard to a letter's receipt by presenting evidence descriptive of *routine office procedures* followed with respect to mailings, most jurisdictions consider such evidence insufficient to raise a presumption regarding the letter's receipt, unless the proffered witness claims *actual personal knowledge* that the routine was, in fact, followed completely. *Leasing Associates, Inc.* v. *Slaughter & Son, Inc.*, 450 F.2d 174, 178–180 (8th Cir. 1971); *Orlex Dyes & Chemicals Corp.* v. *United States*, 168 F.Supp. 220, 222–223 (Cust. Ct. 1958), quoting *United States Helmecke* v. *Rice*, 281 F. Supp. 326, 331 (D.C. Tex. 1968). See, further, 25 A.L.R. 9, 13; 85 A.L.R. 541, 544; 30 Am. Jur. 2d, Evidence, Section 1119. Compare *Camay Drilling Company*, 254 NLRB 234 (1981), enfd. *sub nom. Operating Engineers Pension Trust* v. *N.L.R.B.*, memo. Opinion, March 24, 1982 (9th Cir.), in this connection. Monoson's conclusory testimony, that she "always" follows the same procedure, can hardly be considered sufficiently detailed or precise to raise a presumption with respect to the designated letter's receipt.

Upon this record, I find the General Counsel's limited documentary and testimonial proof, regarding the *routine office procedure* followed by Complainant Union's law firm with respect to *mail dispatches*, insufficient to raise the suggested presumption that Respondent *received* the February 1 letter with which we are now concerned. However, should a determination herein be considered warranted, *arguendo*, that the General Counsel's suggested presumption had been generated, Feldman's testimony, that he never received such a letter, would effectively raise a question, requiring some trier of fact's determination, with respect to whether his denial of receipt had overcome the presumption. Herein, I would find the presumption of receipt overcome. When the General Counsel's representative, suggestively, questioned Garcia and Medina, while presenting his case in chief, both men testified that, on separate occasions, Respondent's store salesman, David Friedman, had voluntarily, and for no discernable reason, notified them regarding Respondent's supposed *Saturday, February 2* receipt of some letter from *Complainant Union*, rather than that organization's law firm.

When presented, subsequently, with their prehearing statements—wherein each designated dischargee had, *separately*, reported Friedman's hearsay declaration that *Complainant Union's* letter had been received on *Saturday, February 9* instead—both Garcia and Medina

claimed that their separately volunteered but congruent prehearing specifications, regarding that date, had been mistaken. While a witness, subsequently, Friedman denied *any* conversations with Respondent's former workers, during which Respondent's receipt of some letter, *purportedly sent by Complainant Union*, had been discussed. Further, he described his limited role with respect to handling Respondent's mail; his description—which, within my view, rings true—would warrant a determination that his February 1980 opportunities to discern whether some particular letter, dispatched by Complainant Union, or that organization's law firm, had really been delivered, would have been significantly restricted, or perhaps nonexistent. With matters in this posture, the General Counsel's testimonial proffers, within my view, provide no persuasive warrant for a determination that Respondent's salesman had reported his employer's Saturday, *February 2* receipt of Brundage, Davis, Frommer & Jesigner's purported letter.

With due regard for this deviant testimony, no present determination would be warranted, within my view, that Respondent did, before February 8 particularly, receive a letter, *prepared by Complainant Union's law firm*, detailing that organization's recognition demand.

Second, the General Counsel relies on Feldman's conceded February 1980 conversation with Board Agent McCracken; the businessman's testimony, that he could not recollect the date of McCracken's telephone call specifically, and that he had not grasped the significance or purpose of McCracken's communication—so the General Counsel's representative contends—should be considered "incredible" herein. I find merit in the General Counsel's contention and, consistently therewith, I find, contrary to Feldman's testimony, and despite his professed failure of recollection, that McCracken's telephone call sufficed to put Respondent's proprietor on notice that a Board petition, concerned with Complainant Union's claim to represent his firm's journeymen and apprentice electricians, had been filed. (Judges are not required to be "naif, simple-minded" men. *Shattuck Denn Mining Corporation* v. *N.L.R.B.*, 362 F.2d 466, 470 (2d Cir. 1966). Thus, when a witness' demeanor satisfies some trier of fact, not only that the witness' testimony is *not* true, but that the truth is the *opposite* of his story, such a trier of fact may *assume the truth* of what the witness denies. *Dyer* v. *McDougall*, 201 F.2d 265, 269, quoted in *N.L.R.B.* v. *Walton Manufacturing Co.*, 369 U.S. 404, 408 (1963).) Herein, within my view, Respondent's proprietor was not, generally, a prepossessing witness. His testimony regarding his multiple reasons for terminating Richenthal, and later selecting Garcia and Medina for dismissal, which will be considered, further, within this Decision, reflects some reliance on shifting defenses. *Inter alia*, when presented with the Regional Office's prehearing commerce questionnaire, Respondent's proprietor, at first, *denied* that his firm had derived more than $500,000 in gross revenue, during its last completed fiscal or calendar year; while a witness, however, he claimed that Respondent's long-term Fox Wilshire Theater renovation project—which Respondent started and completed in 1979—had produced $80,000 monthly in gross revenue, *minimally*, for some 8 or 9 months. I note, further Feldman's concession, while a witness, that he and his wife have "other" sources of income; their resources have, so he testified, enabled them to help finance their son's purchase of another business enterprise. As a businessman, Feldman stands revealed, within this record, as generally knowledgeable, effective, and far from naive. Thus, his qualified witness-chair concession—when shown Board Agency McCracken's notes with respect to their telephone conversation—that his memory regarding that conversation had been refreshed, but that, *nevertheless*, he could not recall whether the Board agent had explained NLRA procedures, whether Feldman had been queried regarding his willingness to agree to an election, whether McCracken had mentioned Complainant Union's name, or whether the Board agent's notation regarding their conversation's date was correct, strain credulity. Upon this record, which, mindful of my observations regarding Feldman's witness chair demeanor, I have carefully considered, I find myself satisfied, as previously noted, that prior to Garcia's and Medina's February 8 discharges, Respondent's proprietor had been, effectively, put on notice that Complainant Union's campaign for representative status, with particular reference to the firm's electrical craftsmen, had finally prompted that organization's resort to Board proceedings.

2. Challenged discharges

a. *Bruce Richenthal*

Previously, within this Decision, Richenthal's participatory role as Complainant Union's protagonist, within Respondent's craft worker complement, has, without challenge or contradiction, been established. Further, Respondent's knowledge, with respect to his prounion activities, has, within my view, been persuasively demonstrated. Likewise, the General Counsel's representative has, so I find, established, *prima facie* that Feldman's negative reaction with respect to Richenthal's protected conduct constituted "a" motivating factor in connection with that designated worker's discharge.

The General Counsel's case, with respect to Feldman's motivation, rests, clearly, upon his record showing: *First*, that Richenthal's precipitate termination, 1 day before Respondent's regular payday, followed within something less than 48 hours the January 15 evening union organizational meeting previously noted herein, and several subsequent, union-related, January 16 conversation, in which Richenthal and Garcia participated, while on Respondent's premises; and *second*, that Feldman's volunteered comments, during his subsequent January 18 conversation with Garcia, regarding Richenthal's termination and related matters, reflected, despite their transparently oblique phraseology, his desire to forestall Respondent's unionization.

With matters in this posture, Respondent contends, nevertheless, that Richenthal was dismissed for cause. Within my view, however, Feldman's testimonial proffers in this connection, despite the General Counsel's conceded inability to rebut him directly, cannot withstand scrutiny. The General Counsel's case, with respect to Richenthal's termination, has not been overborne.

According to Respondent's proprietor, Richenthal was told when he was terminated that Respondent had received "complaints" from customers regarding him; when pressed for details, however, Feldman merely cited a single complaint. And, when queried, initially, with respect thereto, Respondent's proprietor provided no date; subsequently he claimed that Respondent's salesman had received the customer's complaint *within the month* preceding Richenthal's discharge. (In his sworn prehearing statement, Feldman had, effectively, dated the complaint, contending that it had been received within *1 or 2 weeks* preceding the designated worker's termination.) However, Respondent's records, when produced and consulted, revealed that Richenthal had last performed services, within the designated customer's residence, some *2 months* previously. While a witness, Respondent's proprietor proffered no contention, herein, that he [Richenthal] had been, contemporaneously, cautioned or reprimanded. Upon this record, Feldman's present reliance on "Mrs Hammons's" purported complaint to justify Richenthal's termination, 2 months after the fact, clearly reflects afterthought, within my view.

During their final conversation, so Feldman testified, Richenthal was, further, reminded that he had been discovered going through his employer's "personal" papers. Assuming, *arguendo*, that Respondent's electrician had, indeed, behaved as described, Feldman's report with respect thereto reveals that the incident in question had taken place "one or two" days previously; Respondent's proprietor had, concededly, reacted with nothing more than some "derogatory" remarks. Similarly, Richenthal's purported January 16 refusal to sign a newly prepared W–4 form had triggered nothing more than a brief conversational exchange; Feldman had specifically directed Richenthal to sign the form, and Richenthal had done so. Nothing within the present record, in short, would warrant a determination that Respondent's proprietor had, at the time, considered either "incident" noted sufficiently serious to warrant a significant disciplinary reaction. When Feldman told Richenthal that he was being terminated because or his purportedly questionable "attitude" nothing was said, so I note, regarding their form W–4 contretemps, which had, supposedly, provided its most recent manifestation.

Previously, within this Decision, reference has been made to Feldman's testimony regarding Salesman Friedman's report—*more than a week previously*—that Richenthal had purportedly solicited his [Friedman's] cooperation, calculated to facilitate the electrician's surreptitious removal of some material from Respondent's retail store. While a witness, Respondent's proprietor claimed that he had, then, considered Richenthal guilty of *serious* misconduct. Nevertheless, he had manifested no immediate critical or admonitory reaction; his purported forbearance, within my view, reflects some remarkable solicitude and sensitivity. Within my view, Feldman's professions, in that connection, lack the ring of truth.

In his sworn, prehearing statement, submitted to Board Agent McCracken, Respondent's proprietor had, further, cited Richenthal's purported record of frequent tardiness, when reporting for work, supposedly to justify the electrician's termination. While a witness, however, Feldman neither claimed, nor sought to prove, Richenthal's supposed "later reporting" record. Within this decision, Feldman's claim, that Garcia and Medina had been frequently cited for tardiness, will be noted; Respondent's proprietor, however, presently proffers no claim that Richenthal had been similarly reprimanded, or that he had been taxed with "constant" late reporting, when notified regarding his termination.

This Board's acceptance, when confronted with a concerned employer's statement regarding his purported reasons for a challenged discharge, cannot be compelled, where reasonable grounds exist for a belief that multiple reasons, proffered by the employer, were not his true ones, and that his real motivation derived from disquietude generated by the particular employee's prounion activity. Herein, the record—within my view—preponderantly warrants a conclusion that Feldman was attempting "to substitute 'good' reasons for 'real' reasons" with respect to Richenthal's termination (*Hugh H. Wilson Corp.* v. *N.L.R.B.*, 414 F.2d 1345, 1347 (3d Cir. 1981)), whereby he might conceal the fact that his discharge decision had been motivated by Richenthal's perceived involvement with prounion developments, within Respondent's crew complement. In short, Feldman's testimony—clearly proffered with knowledge that the General Counsel's representative could not produce Richenthal, for purposes of contradiction—constituted a tactical maneuver, within my view, calculated to preclude any possible conclusion, that Richenthal's participating in prounion conduct had influenced his termination decision, by hurling a barrage of complaints and criticism directed at Respondent's departed craftsman. Faced with the General Counsel's *prima facie* showing, Respondent had, within my view, failed to demonstrate that Richenthal's dismissal would have taken place absent his participation in statutorily protected conduct. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). I conclude, therefore, that Richenthal's January 17, 1980, termination constituted discrimination with regard to his hire, calculated to discourage union membership, which the statute proscribes.

b. *Anthony Garcia and Jose Medina*

Upon comparable grounds, I conclude that Garcia and Medina were, likewise, terminated for statutorily forbidden reasons. Previously, within this Decision, the General Counsel's presentation, which persuasively demonstrates Garcia's participation in prounion discussions with fellow workers, has been noted; upon this record, further, Feldman's knowledge with respect thereto may be taken as datum, despite his proffered denials.

Medina's concurrent participation in various discussions—while on Respondent's premises—concerned with "improving wages and job benefits" and "bringing in a union" for Respondent's craft employees had been conceded. Further, the record herein reveals Respondent's several stipulations: That Medina was present during the January 15 gathering at Richenthal's residence; that he signed Complainant Union's authorization card there; and that he continued to discuss Respondent's possible

unionzation, with fellow workers, following Richenthal's discharge. While a witness, Medina testified without challenge or contradiction that, directly following Richenthal's termination, he queried Respondent's proprietor with respect thereto. The latter declared—so Medina's credible testimony shows—that Richenthal had been terminated because he [Feldman] "had to make some changes" and because Richenthal had been "kind of getting into" his business.

Since the record herein warrants a determination—which I have, heretofore, made—that Richenthal had been discharged discriminatorily, for statutorily proscribed reasons, logic and commonsense suggest that Medina's query, regarding his fellow craftsman's termination, would have sufficed to suggest, to Respondent's proprietor, that Medina, most likely, shared Richenthal's union sympathies. Further, Feldman's conceded, business-related, walkabouts within Respondent's physically circumscribed Beverly Hills facility, would have provided him—so I find—with frequent opportunities to observe Medina's conversations with Richenthal and Garcia, known to him [Feldman] as union protagonists.

Upon this record, the General Counsel's representative has, within my view, provided reliable, probative evidence, sufficient to warrant a determination that Respondent's proprietor had—before Medina's February 8 termination—discovered the latter's concern with respect to Respondent's unionization.

As previously noted, however, Respondent's proprietor, when queied with respect to Garcia's and Medina's terminations, claimed that his firm's reduced January-February 1980 business revenue had dictated some crew retrenchment, and that both craftsmen had been selected for termination without regard for their presumed prounion sentiments.

Considered in totality, however, the present record, within my view, will not sustain Respondent's present contentions.

With respect to Respondent's purportedly "reduced" business revenues, Feldman testified, without contradiction, that his firm's January 1980 sales—following the completion of the Fox Wilshire Theater renovation project—fell to $21,000, presumably derived, merely, from short-term residential and commercial installation or repair work, retail appliance sales, and small appliance repair services. Clearly, Respondent's monthly business revenues had, indeed, declined substantially from the $80,000–$100,000 range which had reportedly prevailed throughout Respondent's 8- or 9-month period of service on Fox Theater renovation; the firm's January 1980 revenues, however, were still within the monthly $20,000–$30,000 range which Respondent's business had, concededly, maintained throughout the 4- or 5-month period which had *preceded* the firm's long term contractual engagement for theater work. (Feldman's testimony, considered in totality, reveals that when Respondent's crew was reduced, following the theater project's completion he had, nevertheless, retained qualified craftsmen roughly equivalent in number to those who had, *previously*, serviced Respondent's smaller residential and commercial customers.) Respondent's reported February 1980 sales—cited by the General Counsel's representative, with Feldman's confirmation—do reveal gross receipts totaling $16,800 merely; by Thursday evening, February 7, however—when Respondent's proprietor purportedly decided that some personnel reduction might be required—only 5 of the month's 20 working days had passed. Respondent's proprietor could hardly have known, then, that his firm's gross revenue, for the full month, would prove significantly reduced. And, subsequently, during March 1980, the firm's monthly sales revenue exceeded $37,000; thereafter, Respondent's gross receipts concededly "fluctuated" within a limited range close to $28,000 monthly. Upon this record, within my view, Feldman's present contention that Respondent's January 1980 reversion to reduced business levels, *comparable with those which had prevailed throughout a 4- or 5-month winter-spring period directly following his purchase of the firm*, dictated a significant 28-percent or 33-percent reduction in his six- or seven-man complement of presumptively qualified electricians carries no persuasion.

Further, should a determination be considered warranted, *arguendo*, that Respondent's reduced revenues did warrant some personnel layoffs, Feldman's decision that Garcia and Medina, particularly, should be terminated, may—upon this record—reasonably be considered, within my view, derived from statutorily proscribed considerations.

Respondent's contention, herein, that Garcia was selectively terminated—despite his relatively lengthy 20-month service record—for nondiscriminatory, business-related reasons, cannot withstand scrutiny.

While a witness, Respondent's proprietor claimed that Garcia was told the firm's "business" was slow, and that he was, therefore, being terminated, for several stated reasons. *Inter alia*, Garcia was told—so Feldman reported—that this "attitude" toward his work had been "extremely" poor; Respondent's proprietor, however, cited no specific grounds for his conclusionary judgment.

In many Board cases, too numerous to cite, comments regarding some worker's purportedly "poor attitude" have been considered—within their particular situational context—patently euphemistic references to that worker's presumptive or known prounion sympathies. Absent particularized specifications, proffered by Feldman, persuasively supportive of his purportedly business-related judgment with respect to Garcia's attitude, his comment—noted—may reasonably be considered calculated to convey his displeasure with respect to Garcia's known union activties. That—so I find—was its realistically *intended* thrust.

Feldman's testimony suggests, further, that Garcia was taxed with critical "calls" regarding his work, which Respondent had purportedly received from dissatisfied customers; however, none of these calls, save one, were specified. (While a witness, Garcia conceded Feldman's reference to some woman customer's complaint that he, together with his partner, had taken "too much time" to complete required work. Garcia recalled, however, that his complaint had been registered some *3 months* previously; his testimony, with respect thereto, stands herein without contradiction.) While a witness, Respondent's proprietor reported that salesman Friedman handled

most of his firm's customer complaints. However, Friedman, while testifying herein, reported no specific complaints received regarding Garcia's job performance. Rather he purportedly recalled a complaint received that, while Garcia, together with a helper, was "moving" some chandeliers, one chandelier had "mysteriously disappeared" but later "mysteriously appeared" within Respondent's van. Respondent's salesman provided no further details with regard to this particular incident's date or surrounding circumstances; nothing within the present record would warrant a determination that Respondent's proprietor had been told about it, that Garcia had been questioned with respect thereto, or that he had ever been admonished regarding the matter. (Friedman testified, further, regarding some customer complaints that "pots and pans" had disappeared from their garages. He conceded, however, that without consulting his records he could provide no details. No such complaints, specifically registered with respect to Garcia, have been cited.) When queried, during cross-examination, with respect to whether he had ever "seen" Garcia take "anything" which did not belong to him, Friedman reported that Garcia had removed a statuette from Jimmy Durante's house. Respondent's salesman never explained how he had "seen" Garcia do so; he conceded, further, that he had never reported this supposed theft. (When he volunteered this testimony, Friedman declared, with a noticeable smirk, that Garcia's purportedly questionable conduct had never "come up" or been "known" by any other person previously; he claimed that the General Counsel's representative had "dragged" the charge out of him.) When summoned in rebuttal, Garcia denied, categorically, that he had ever sought to misappropriate a chandelier, taken any customer's pots and pans, or stolen a statute from Jimmy Durante's house. Upon this record, his denials, within my view, merit credence. Further, Feldman's failure to cite his subordinate's serious charges with respect to Garcia's supposed misconduct—with respect to that discharge—warrants a determination, which I make, that such "complaint" contributed nothing to his (Feldman's) decision, and cannot, properly, be cited as justification for Garcia's challenged termination.

Garcia's record with respect to tardiness, particularly within the 2-month period which preceded his dismissal, has, however, been mentioned by Respondent's proprietor. Feldman's testimony, reasonably construed, reflects his purported recollection that when Garcia was given his termination notice he was reminded that, previously, he had been warned "constantly" with respect to late reporting.

Garcia's testimony, regarding Feldman's remarks during their February 8 conversation, reflects no recollection that his tardiness record was mentioned. The record, however, does reveal that Garcia and Medina had—for several months prior to their termination—ridden to work together. Their timecard entries, with respect to late reporting—therefore—would, necessarily, have been comparable, perhaps even precisely congruent. And, since Medina's testimony herein reveals that Respondent's proprietor did—concededly—discuss his record with respect to tardiness during their February 8 conversation directly following Garcia's dismissal, I, find, consistently with Feldman's testimony, that both dischargees were indeed taxed with their purported "late reporting" proclivities.

Respondent's timecard records—cited and recapitulated, testimonially, herein—do reveal that Garcia and Medina may have reported "late" for work with some frequency. And Feldman's testimony—which I credit in this connection—does warrant a determination that when Respondent's two craftsmen were, upon occasion, *significantly* late their tardiness would, *sometimes*, discommode Respondent's daily dispatch routine. This being so, Respondent's proprietor would have most likely felt himself constrained to chide both Garcia and Medina, while concurrently exhorting them to report promptly. Considered in totality, however, the present record will not—within my view—warrant a determination that Garcia's late reporting record provide more than a plausible pretext for Feldman's final discharge decision. (*Inter alia*, the record reveals that Garcia's timecards, during his last full week at work, reflect a significantly improved, though not perfect, reporting record.) Having considered, carefully, Respondent's testimonial and documentary proffers—which need not, herein, be detailed—I am satisfied that Garcia's purported late reporting record was a phenomenon with which Respondent's proprietor had lived for some substantial period of time; it was a phenomenon with respect to which I find Feldman had developed a claimed "concern" directly consequent on his discovery that Respondent might, shortly, face a Board-sponsored representation vote.

Feldman's witness-chair references to Garcia's personal tool purchase from a company supplier—purportedly without soliciting or receiving prior authorization or permission—for which Respondent was concededly billed, merit further consideration. Briefly, Respondent's several testimonial proffers—when synethesized, reconciled, and considered in totality—reflect contentions: That Garcia had procured two small hand tools, on January 23, 1980, from a company supplier; that Respondent's proprietor had, later that day, seen him engraving his name on both tools; that Feldman had not, then, known Respondent would be billed for Garcia's purchases; that he had, therefore, raised no questions, specifically on January 23, with respect thereto; that the supplier's invoice, when subsequently submitted to Respondent's bookkeeper, had reflected a $16.03 charge for Garcia's purchased tools; that Respondent had received the supplier's bill on January 30; that Feldman had, thereafter, learned about Garcia's purchase charged to his firm, shortly after February 1, when his store subordinate, Friedman, following a *pro forma* review of Respondent's bills, brought the supplier's invoice to his attention; and that Feldman had promptly confronted Garcia and reprimanded him severely. With matters in this posture, Respondent's proprietor presently contends herein that he had, thereafter, considered Garcia's purportedly "unauthorized" purchase, *inter alia*, when selecting workers for termination, pursuant to his claimed retrenchment program.

In this connection, Garcia claimed: That on January 23 or shortly prior thereto, Feldman had really "authorized" his personal tool purchases; that he had never—

during subsequent conversations with Respondent's proprietor—conceded a failure, on his part, to solicit authorization with respect to such purchases, or personal knowledge that Feldman had, really, denied him permission; and that Garcia has never been requested to compensate Respondent, or Respondent's supplier, for his newly acquired tools. When queried then regarding his February 8 conversation with Respondent's proprietor, Garcia recalled no comments, whatsoever, regarding his January 23 purchases; nor did he recall Feldman's purportedly negative reaction previously manifested. The record, considered in totality, persuasively suggests—within my view—that Garcia did, indeed, request permission to purchase tools on Respondent's credit; that he was, however, vouchsafed a rather ambiguous response—specifically, a mere "wave of the hand" gesture—which Feldman provided while preoccupied with a telephone conversation; that Garcia, thereupon, concluded—subjectively—that he had received permission; that he proceeded, thereafter, consistently with that belief; but that Respondent's proprietor had never, really, meant to grant Garcia permission for personal tool purchases. I am satisfied, therefore, that Feldman concluded—subsequently—that no such permission had been granted. While a witness, Respondent's proprietor conceded that Garcia has never been requested to provide payment for his purchased tools.

Upon this record, Respondent's present contention, that Garcia's course of conduct with respect to this "tool incident" did contribute to Feldman's discharge decision, carries no persuasion. Clearly, Respondent's proprietor had learned several days prior to his February 7 discharge decision that Garcia had purchased tools for personal use, for which Respondent had been billed; considered in totality, however, the record warrants a determination—which I make—that Respondent's present reliance thereon, purportedly to justify the craftsman's dismissal, merits characterization as pretextual.

Feldman's testimony, taken at face value, clearly reveals that Garcia's purportedly double dereliction—purchasing tools for personal use witout his superior's permission, and requesting that Respondent be billed for them—had come to his notice several days before Respondent's February 8 payday. (Respondent's proprietor could not recall the date precisely. Garcia's testimony suggests that Feldman discussed the matter with him on Wednesday, February 6; I so find.) While a witness, Respondent's proprietor claimed that he had been "infuriated" by Garcia's action. Nevertheless, Respondent's craftsman had not been discharged forthwith. Further, Feldman had neither required him to reimburse Respondent, nor pay the firm's supplier directly for his newly acquired tools. The failure of Respondent's proprietor to react consistently—revealed within his testimony—when dealing with Richenthal's and Garcia's purported misconduct seems patent. If, as Respondent's proprietor currently contends, Richenthal had been previously discharged forthwith for several less significant derelictions which Feldman had allegedly considered distressing, his failure to react promptly, with comparable severity, when confronted with Garcia's purportedly serious dereliction merits characterization as incomprehensible. Feldman's forebearance, within my view, persuasively suggests that when he became cognizant, initially, with regard to Garcia's conduct, he considered a stringent reprimand, merely, was warranted. Shortly thereafter, he learned—so I have found—that Complainant Union's representation petition had been filed. Only then, so the record shows, did Respondent's proprietor conclude that Garcia's discharge might be desirable. I conclude, therefore, that, when Respondent's proprietor reached his decision with regard to Garcia's termination, that decision, basically, derived from statutorily impermissible considerations; and that Feldman's present, witness-chair citation of multiple reasons, proffered to justify the craftsman's dismissal, reflects his determination to marshal a congeries of pretexts, whereby his patently "unlawful" motive might be concealed. See *Shattuck Denn Mining Corp. (Iron King Branch)*, 151 NLRB 1328, 1336 (1965), enfd. 362 F.2d 466, 470 (9th Cir. 1966), in this connection.

Moreover, regardless of this analysis, I would find that even if, *arguendo*, Feldman, when terminating Garcia, had been genuinely motivated, to *some* degree, by concerns with regard to his tardiness record, customer complaints, or purportedly unauthorized tool purchase Respondent's proprietor has clearly failed to demonstrate, persuasively, that the craftsman would have been dismissed, because of those concerns, even if he had never participated in statutorily protected activity. See *Wright Line, a Division of Wright Line, Inc., supra; N.L.R.B.* v. *Nevis Industries*, 107 LRRM 2890 (9th Cir. 1981), in this connection. The timing of Garcia's challenged termination, shortly following the filing of Complainant Union's representation petition, and Feldman's acquistion of knowledge with respect thereto—considered in conjunction with his previous comments, noted herein, that he thought Richenthal had "put things" into Garcia's mind, that he wanted no "trouble" within his shop, and that Garcia could "go elsewhere" if he thought he could do better—warrant a determination, within my view, that Garcia's February 8 termination violated Section 8(a)(3) and (1) of the statute.

Medina's concurrent dismissal, likewise, derived from statutorily proscribed considerations, within my view. While a witness, Medina conceded that during his February 8 conversation with Respondent's proprietor he was told there had been customer complaints regarding his work. He recalled one; some customer—never specified—had complained because he had taped a wire to a table leg. When queried, subsequently, with respect to purported complaints, Respondent's salesman recalled another—which, however, he could merely describe generally. Neither Feldman, nor Friedman, could place Medina's conceded "table leg" gaffe within a conceivably relevant time frame. With matters in this posture, determinations seem clearly warranted that—as in Garcia's case—customer complaints with respect to Medina's work may have provided Respondent with some cause for concern; that they may have prompted reprimands; but that such complaints were considered no unsual concomitants of Respondent's service-related business, and were "lived with" before Respondent's proprietor

became congnizant of the craftsman's union sympathies. Though Medina, who had been riding to work with Garcia for some time, was likewise charged with "consistent" tardiness, he—like his fellow worker—had never had disciplined for such behavior; nor had he ever been warned that continued "late reporting" might jeopardize his tenure. Here again, Feldman's reference to the craftsman's tardiness record—during their February 8 conversation—persuasively suggests, within my view, his determination to cite a plausible stigma calculated to mask or conceal his statutorily forbidden motivation.

In this connection, I note, further, Feldman's bald, conclusionary testimony that Medina had been a slow worker, whose on-the-job performance had been poor, presumably for some prolonged period before his discharge. Such a contention, naturally, raises an obvious question; Why had not Respondent's proprietor terminated Medina previously, if his work performance had been so deficient? Respondent has made no credible showing, herein, sufficient to warrant a determination that Feldman could not have procured a qualified replacement for Medina; no efforts, calculated to produce such a replacement, have been reported. *Au contraire*, Respondent's proprietor conceded that—despite Medina's purported work deficiencies—he had given the craftsman a raise, albeit a small one, just 2 weeks prior to his termination. Feldman's witness chair claim that Medina's raise had been granted, despite his poor performance record, simply because it had previously been promised lacks the ring of truth, within my view.

With matters in this posture, Medina's termination—like Garcia's, effectuated on the same date—clearly merits characterization as discrimination, with regard to his hire and tenure, calculated to discourage union membership. I so find.

3. Interference, restraint, and coercion

Within his complaint, the General Counsel's representative charges that Respondent, through Feldman, had created an impression, within his firm's crew complement, that their union activities were under surveillance. Garcia's testimony regarding his Friday, January 18, conversation with Respondent's proprietor—which I have, herein, found worthy of credence—reveals Feldman's concession, therein, that he had seen Richenthal and Garcia "talking to the other employees" and that he wanted such conversations stopped. With matters in this posture, I find merit in the General Counsel's 8(a)(1) contention.

The General Counsel charges, further, that Feldman threatened a company employee with discharge if he caused any trouble in the shop, because of his participation in prounion conversations. Within my view, however, Feldman's conversational references to possible "trouble" cannot be considered threats of discharge; the General Counsel's contention with respect thereto—within my view—cannot be considered, preponderantly, sustained.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

Respondent's course of conduct, set forth in section III, above, since it occurred in connection with Respondent's business operations referred to in section I, above, had, and continues to have, a close, initimate, and substantial relationship to trade, traffic, and commerce among the several States. Absent correction, such conduct would tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce.

In view of these findings of fact, upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent, Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce, within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 11, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act, as amended, which admits certain of Respondent's employees to membership.

3. Howard Feldman, Respondent's proprietor, when, through statements directed to company employees, he "created the impression" that surveillance had been maintained with respect to their union activities, interfered with, restrained, and coerced such employees with respect to their exercise of rights statutorily guaranteed. Thereby, Respondent has engaged in, and continues to engage in, an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. Respondent's proprietor when he terminated the employment of Bruce Richenthal, Anthony Garcia, and Jose Medina, under the circumstances hereinabove noted, discriminated against them, with respect to their hire and tenure of employment, and further interfered with, restrained, and coerced Respondent's employees, generally, with respect to their exercise of rights statutorily guaranteed. Thereby, Respondent engaged in, and continues to engage in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1), and Section 2(6) and (7) of the Act:

THE REMEDY

Since I have found that Respondent, Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric, has committed, and has thus far failed to remedy, certain specific unfair labor practices which affect commerce, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action, including the posting of approriate notices, designed to effectuate the policies of the Act.

Specifically, I have found that Section 8(a)(3) and (1) of the statute was violated when Respondent's proprietor dismissed Bruce Richenthal, Anthony Garcia, and Jose Medina, for statutorily forbidden reasons. I shall, there-

fore, recommend that Respondent be required to offer the three individuals immediate and full reinstatement to their former positions or, should those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. When this case was heard, employee Richenthal's precise whereabouts was unknown. Should the address where he can currently be reached be known, or become ascertainable through reasonable efforts, Respondent's reinstatement offer should be communicated to him at that known, or newly discovered, address. Should this not prove possible, Respondent's reinstatement offer should be sent to Richenthal at his last known address. Respondent should further be required to make Richenthal, Garcia, and Medina whole, for any pay losses which they may have suffered, or may suffer, by reason of the discrimination practiced against them, by the payment of sums of money equal to the amounts which they normally would have earned as wages, from the dates of their respective discriminatory terminations, herein found, to the date or dates on which Respondent offers them reinstatement, less their net earnings during the period designated.

Since Richenthal's whereabouts, currently, may not be known or ascertainable, Respondent's net backpay liability, with respect to him—gross backpay less net interim earnings—may not be readily determinable. It will be recommended, therefore, that Respondent be required to deposit a sum equivalent to Richenthal's gross pay losses, within the backpay period, with the Regional Director for Region 31, in escrow. Such deposit, plus interest thereon, computed consistently with this Board's conventionally mandated requirements noted below, shall be required subject to the condition that when and if Richenthal is located determinations shall be made concerning his interim earnings, expenses, and other factors which might diminish Respondent's liability. Any deductions from gross backpay which may, thereupon, be determined should be returned to Respondent. Should Richenthal's whereabouts not be discovered and should the calculations directed herein, therefore, not be made within 1 year from the date of Respondent's deposit, the entire sum deposited and held in escrow should be returned, with the understanding, however, that such return does not extinguish Respondent's backpay liability to Richenthal. See *Robert Haws Company*, 161 NLRB 299, 300, 302-303, fn. 2 (1966), in this connection.

Whatever backpay these discriminatees may be entitled to claim should be computed by calendar quarters, pursuant to the formula which the Board now uses. *F. W. Woolworth Company*, 90 NLRB 289, 291-296 (1950). Interest thereon should likewise be paid, computed, in the manner prescirbed in *Florida Steel Corporation*, 231 NLRB 651 (1972); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), in this connection.

Since Respondent's course of conduct, found violative of the law herein, "goes to the heart of the Act," a broadly phrased cease-and-desist order would within my view, presently be warranted.

Upon the foregoing findings of fact, conclusions of law, and the entire record, I hereby issue, pursuant to Section 10(c) of the Act, as amended, the following recommended:

ORDER[1]

The Respondent, Howard and Roberta Feldman Corporation d/b/a L. A. Baker Electric, Beverly Hills, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or laying off workmen, or discriminating in any manner with regard to their hire or tenure of employment, or their terms and conditions of employment, because of their participation in concerted activities, for the purposes of collective bargaining or other mutual aid or protection, which involves their exercise of rights statutorily guaranteed.

(b) Maintaining surveillance, or creating the impression that surveillance has been maintained, with respect to concerted activities, engaged in by employees for the purposes of collective bargaining or other mutual aid or protection, which involve their exercise of rights statutorily guaranteed.

(c) Interfering with, restraining, or coercing employees in any other manner with respect to their exercise of rights which Section 7 of the statute guarantees.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Bruce Richenthal, Anthony Garcia, and Jose Medina immediate and full reinstatement to their former position or, should those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any losses of pay which they may have suffered, or may suffer, because of the discrimination practiced against them, plus interest, in the manner and to the extent set forth within The Remedy section of this Decision.

(b) Preserve, until compliance with any order for backpay made by the Board in this proceeding, and upon request make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records relevant and necessary to reach a determination with respect to the amount of backpay due, pursuant to this Order.

(c) Post within Respondent's Beverly Hills, California, place of business copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 31, shall be posted immediately upon their receipt, after being duly signed by Respondent's representative. When posted, they shall remain posted for 60 consecutive days thereafter, in conspicuous places, including all place where notices to Re-

[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent's employees have customarily been posted. Reasonable steps shall be taken by Respondent to ensure that these notices are not altered, defaced, or covered by any other material.

(d) File with the Regional Director for Region 31, within 20 days from the date of his Order, a written statement setting forth the steps which Respondent has taken to comply herewith.